39-28-303. Certifications - directory - tax stamps.

(1) **Certification.** (a) Every tobacco product manufacturer whose cigarettes are sold in this state whether directly or through a distributor, retailer, or similar intermediary or intermediaries shall execute and deliver in the manner prescribed by the department a certification to the executive director of the department no later than the thirtieth day of April each year certifying under penalty of perjury that, as of the date of such certification, the tobacco product manufacturer either is a participating manufacturer or is in full compliance with the tobacco escrow funds act and all implementing regulations.

(b) A participating manufacturer shall include in its certification a list of its brand families. The participating manufacturer shall update the list thirty days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the department.

(c) A nonparticipating manufacturer shall include in its certification a complete list of all of its brand families, and the list shall:

(I) Separately list:

(A) Brand families of cigarettes and the number of units sold for each brand family that were sold in the state during the preceding calendar year; and

(B) All of the nonparticipating manufacturer's brand families that have been sold in the state at any time during the current calendar year;

(II) Indicate by an asterisk, any brand family sold in the state during the preceding calendar year that is no longer being sold in the state as of the date of such certification; and

(III) Identify by name and address any other manufacturer of such brand families in the preceding calendar year.

(d) A nonparticipating manufacturer shall update a certification thirty days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the department.

(e) A certification of a nonparticipating manufacturer shall further certify:

(I) That the nonparticipating manufacturer is registered to do business in the state or has appointed a resident agent for service of process and provided notice thereof as required by section 39-28-304;

(II) That the nonparticipating manufacturer has:

(A) Established and continues to maintain a qualified escrow fund, as defined in section 39-28-202 (6); and

(B) Executed a qualified escrow agreement that has been reviewed and approved by the attorney general and that governs the qualified escrow fund;

(III) That the nonparticipating manufacturer is in full compliance with the tobacco escrow funds act, this part 3, and any rules promulgated pursuant to the tobacco escrow funds act or this part 3; and

(IV) That information pertaining to the qualified escrow fund, including:

(A) The name, address, and telephone number of the financial institution where the nonparticipating manufacturer has established the qualified escrow fund required by section 39-28-203 and all rules promulgated thereto;

(B) The account number of the qualified escrow fund and sub-account number for the state of Colorado;

(C) The amount the nonparticipating manufacturer placed in the fund for cigarettes sold in the state during the preceding calendar year, the date and amount of each deposit, and such evidence or verification as may be deemed necessary by the department to confirm the foregoing; and

(D) The amounts of and dates of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from the fund or from any other qualified escrow fund into which it ever made escrow payments pursuant to the tobacco escrow funds act and all rules promulgated thereto.

(f) (I) A tobacco product manufacturer may not include a brand family in its certification unless:

(A) In the case of a participating manufacturer, the participating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of calculating its payments under the master settlement agreement for the relevant year in the volume and shares determined pursuant to the master settlement agreement; and

(B) In the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of the tobacco escrow funds act.

(II) Nothing in this paragraph (f) shall be construed as limiting or otherwise affecting the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the master settlement agreement or for purposes of part 2 of this article.

(g) Tobacco product manufacturers shall maintain all invoices and documentation of sales and other such information relied upon for such certification for a period of five years, unless otherwise required by law to maintain them for a greater period.

(2) **Directory of cigarettes approved for stamping and sale.** (a) Not later than June 1, 2003, the department shall develop and publish on its web site a directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of subsection (1) of this section and all brand families that are listed in such certifications; except that:

(I) The department shall not include or retain in the directory the name or brand families of any nonparticipating manufacturer that has failed to provide the required certification or whose certification the department determines is not in compliance with paragraphs (c) and (d) of subsection (1) of this section, unless the department has determined that the violation has been cured to the satisfaction of the department.

(II) Neither a tobacco product manufacturer nor brand family shall be included or retained in the directory if the executive director of the department concludes that:

(A) In the case of a nonparticipating manufacturer, any escrow payment required pursuant to the tobacco escrow funds act for any period for any brand family, whether or not listed by the nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the attorney general; or

(B) Any outstanding final judgment, including interest thereon, for violations of the tobacco escrow funds act has not been fully satisfied for the brand family and the manufacturer.

(b) The department shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of this part 3.

(c) The department shall transmit by electronic mail or other practicable means to each stamping agent notice of any addition to or removal from the directory of a tobacco product brand manufacturer or brand family. In addition, the department shall transmit by electronic mail or other practical means to each stamping agent notice of the potential removal from the directory of a tobacco product brand manufacturer or brand family three calendar days before the tobacco product brand manufacturer or brand family is actually removed from the directory. Unless otherwise provided by agreement between a stamping agent and a tobacco product manufacturer, a stamping agent shall be entitled to a refund from a tobacco product manufacturer of any money paid by the stamping agent to the tobacco product manufacturer for any cigarettes of the tobacco product manufacturer still held by the stamping agent on the date of notice by the department of the removal from the directory of the tobacco product manufacturer or the brand family of the cigarettes. The department shall not restore to the directory a tobacco product manufacturer or a brand family until the tobacco product manufacturer has paid the stamping agent any refund due.

(d) Every stamping agent shall provide and update as necessary an electronic mail address to the department for the purpose of receiving any notifications that may be required by this part 3.

(3) **Prohibition against stamping or sale of cigarettes not in the directory.** It shall be unlawful for any person to:

(a) Affix a stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory; or

(b) Sell, offer, or possess for sale in this state cigarettes of a tobacco product manufacturer or brand family not included in the directory.

Source: L. 2003: Entire part added, p. 1753, § 1, effective May 14. **L. 2011:** (1)(a) and IP(2)(a) amended, (HB 11-1303), ch. 264, p. 1176, § 94, effective August 10.

39-28-306. Penalties and other remedies.

(1) **License revocation and civil penalty.** In addition to or in lieu of any other civil or criminal remedy provided by law, upon a determination that a stamping agent has violated section 39-28-303 (3) or any rule adopted pursuant thereto, the executive director of the department may revoke or suspend the license of any stamping agent in the manner provided by sections 39-28-102 (1) and 39-28.5-104. Each stamp affixed and each offer to sell cigarettes in violation of section 39-28-303 (3) shall constitute a separate violation. For each violation, the executive director may also impose a civil penalty in an amount not to exceed the greater of five hundred percent of the retail value of the cigarettes sold or five thousand dollars upon a determination of a violation of section 39-28-303 (3) or any rules adopted pursuant thereto.

(2) **Contraband and seizure.** Any cigarettes that have been sold, offered for sale, or possessed for sale in this state in violation of section 39-28-303 (3) shall be deemed a contraband article as defined by section 16-13-502 (1), C.R.S. The cigarettes shall be subject to seizure and forfeiture as provided in the "Colorado Contraband Forfeiture Act", part 5 of article 13 of title 16, C.R.S., and any cigarettes so seized and forfeited shall be destroyed and not resold.

(3) **Injunction.** The attorney general, on behalf of the department, may seek an injunction to restrain a threatened or actual violation of section 39-28-303 (3) or 39-28-305 (1) or (4) by a stamping agent and to compel the stamping agent to comply with those statutory provisions.

(4) **Unlawful sale and distribution.** It is unlawful for a person to sell, distribute, acquire, hold, own, possess, transport, import, or cause to be imported cigarettes that the person knows or should know are intended for distribution or sale in the state in violation of section 39-28-303 (3). A violation of this section is a class 2 misdemeanor.

(5) **Colorado consumer protection act.** A person who violates section 39-28-303 (3) engages in an unfair and deceptive trade practice in violation of section 6-1-105, C.R.S.

(6) **Disgorgement of profits for violations of this part 3.** If a court determines that a person has violated this part 3, the court shall order any profits, gain, gross receipts, or other benefit from the violation to be disgorged and paid to the state treasurer for deposit into the tobacco control special fund, which is hereby created. Unless otherwise expressly provided, the remedies or penalties provided by this part 3 are cumulative to each other and to the remedies or penalties available under all other laws of this state.

Source: L. 2003: Entire part added, p. 1759, § 1, effective May 14.